

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8816 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ALI MOHMMAD GULAMMOHMAD

Versus

COMPETENT AUTHORITY AND THE DEPUTY COLLECTOR

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Appearance:

MRS KETTY A MEHTA for Petitioner

Mr A.G.Uraizee, AGP, for Respondent No. 1

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 26/04/96

ORAL JUDGEMENT

The Competent Authority while adjudicating upon form No.1 filled in by the petitioner under section 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (ULC Act) held that the petitioner is not holding any excess land as the petitioner and other family members who are sharers are not having more than the prescribed ceiling area of land on 31st August, 1987. The Government of Gujarat while

exercising its powers of revision under section 34 of the ULC Act quashed and set aside the aforesaid order of the Competent Authority, ULC, Surat by its order dated 20th December, 1990 and remanded the matter to the Competent Authority for taking into consideration the evidence that may be led by the petitioner and then to decide it afresh in accordance with law.

2. Upon remand, the Competent Authority, ULC, Surat passed order on 4th February 1994 holding that the petitioner and all the members of the family are entitled only one unit of 1500 sq. mtrs. and that 14,460 sq. mtrs. of land is excess land under the provisions of the ULC Act.

3. Being dissatisfied by the order of the Competent Authority after the remand, the petitioner had preferred appeal No.25/94 before the ULC Tribunal raising various contentions. The petitioner had pointed that in some land 13 members of family are sharers of the property and each one is entitled to a separate holding as all of them were major on the appointed day. It was also contended by the petitioner that the lands of survey No.28 block No.33 have road margin, Kotar margin and high tension line margin and pipeline margin and the same should be properly considered and deducted from the holdings. The petitioner relied on the revenue record in support of his pleas. It was also pointed out that survey No.28, 31/A and 30/A-1 have been exempted under section 20 of the ULC Act for the purpose of agriculture and therefore those lands cannot be included in the ceiling area.

4. The ULC Tribunal decided the appeal on 29th April 1995. The appeal came to be dismissed confirming the order of the Competent Authority, ULC, Surat. Hence this petition under Article 226/227 of the Constitution of India.

5. The impugned orders of the Competent Authority and the ULC Tribunal are vulnerable. Various contentions are raised. One of the contentions is that the petitioner and other members of the family under the Mohammedan law are tenants in common and therefore each one is entitled to separate unit. It appears that this contention is not seriously examined by the authorities below. Village form No.7 and 12 under the revenue law was showing 3 names in respect of the disputed land whereas village form No.6 of the revenue record was showing 14 names. It is a settled proposition of law that when co-owners hold definite ear-marked shares in a common property, they can be said to be tenants in

common. Their specified shares do not undergo fluctuations by addition to the group of co-owners or by deletion from the said group. In the event of actual partition by metes and bounds, they do not remain co-owners, but they become separate owners of separate parcel of land coming to the share. However, so long as that eventuality does not occur, all of them remain tenants in common being co-owners of the specified share. This proposition of law is very well explained and expounded in various pronouncements. In *Savitaben Shroff v. State*, 31(2) GLR 792, this Court has taken a similar view.

6. The Urban Land Ceiling Tribunal has decided appeal No.25/94 against the impugned order of the Competent Authority, ULC Surat ex parte. There does not appear to be any justification for ex parte decision. Again the points raised in the appeal are not examined and appreciated properly in the light of the evidence on record. Same is the position in case of the order recorded by the Competent Authority, ULC, Surat. In that order also, there is no proper examination and appreciation of evidence. Thus, it radiates an imprint of non-application of mind in case of both the orders. Therefore, the impugned orders of the Competent Authority, ULC, Surat and the ULC Tribunal in appeal are required to be quashed and set aside and the matter needs to be transmitted back to the Competent Authority for holding fresh inquiry and decision.

7. In the circumstances, the impugned orders of the Competent Authority, ULC, Surat, dated 4th February, 1994 and the order of the ULC Tribunal dated 29th April 1995 are quashed and set aside. The matter is remanded to the Competent Authority, ULC, Surat for reconsideration of the question of excess land after holding fresh inquiry in accordance with law. The petition is allowed accordingly. Rule is made absolute to the aforesaid extent with no order as to costs.

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